

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
HAWAIIAN TELCOM, INC.	)	WCB Docket No. 08-4
	)	
Petition for Waiver of Sections 54.309 and	)	
54.313(d)(vi) of the Commission's Rules	)	
	)	

**COMMENTS OF PACIFIC LIGHTNET, INC.**

Pacific LightNet, Inc. ("PLNI") submits these comments in response to Hawaiian Telcom, Inc.'s ("Hawaiian Telcom" or "HT") Petition for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules ("Petition") filed December 31, 2007.<sup>1</sup> PLNI is a competitive local exchange carrier offering a full range of integrated telecommunications products and services, including local dial tone, high-speed Internet access, dedicated and switched long distance, special access and enhanced data services. PLNI has invested in terrestrial facilities throughout the state, as well as a submarine fiber-optic network with cable landings on all six major islands, including Molokai and Lanai (which are not served by HT's submarine cable).

Hawaiian Telcom seeks a five-year waiver of section 54.309 of the Commission's rules to allow it to receive high-cost model support by averaging line costs on a wire center-by-wire center basis, instead of on a statewide basis. In support of its Petition, HT asserts that it faces special circumstances, namely: (i) the unique challenges of providing service in a state that is geographically isolated and vulnerable to a broad-range of natural and man-made disasters; (ii) the unique vulnerabilities extending from Hawaii's remote location, strategic importance, and

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<sup>1</sup> DA 08-131, Released January 18, 2008.

consequent vulnerability to foreign attack; (iii) the highly dispersed nature of the state's population outside of the single population center in Honolulu; and (iv) HT's lack of alternative funding sources for network investment.

With the exception of (iv) above, the remaining "special circumstances" apply equally to any other eligible telecommunications carrier providing service throughout the state of Hawaii. Moreover, HT's Petition appears to request a waiver of both section 54.309(a)'s calculation methodology and section 54.309(b)'s distribution methodology. As such, the Commission should ensure that any relief provided to Hawaiian Telcom, the non-rural incumbent local exchange carrier, applies equally to any eligible telecommunications carrier serving lines in the applicable HT service areas.

As for Hawaiian Telcom's inclusion of its lack of alternative funding sources as support for its Petition, HT's poor business planning and execution should not be viewed as a factor justifying special relief from the Commission's rules on calculation and disbursement of universal service funds. Put another way, Hawaiian Telcom's inability to access alternative funding sources is largely a problem of its own making. In seeking approval of its proposed acquisition of Verizon Hawaii, the Carlyle Group presented the Hawaii Public Utilities Commission ("Hawaii Commission") with a proposed initial capital structure of over 80% debt. At the time, the Division of Consumer Advocacy raised concerns that HT Communications' high debt capital structure would limit Hawaiian Telcom's ability to access additional funds, which would negatively affect customer service and rates.<sup>2</sup> Recognizing and concurring with these concerns, as a condition of approving the transaction, the Hawaii Commission required Carlyle to infuse additional equity to achieve a capital structure of 76.3% debt and 23.7% equity, which,

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<sup>2</sup> See *In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc., Bell Atlantic Communications, Inc., and Verizon Select Services Inc For Approval of a Merger Transaction and Related Matters*, Docket 04-0140, D&O 21696, dated March 16, 2005, at p. 22.

the Commission hoped would enable Hawaiian Telcom to reduce debt to 65% in a shorter period of time.<sup>3</sup> Carlyle satisfied the Hawaii Commission's immediate closing condition, but, thereafter, rather than moving toward the Hawaii Commission's preferred 65% debt level, HT pushed its debt level to a peak of 93.3% for the quarterly period ended December 31, 2006. Moreover, to the extent HT now complains that its existing debt covenants prohibit it from incurring additional debt or additional liens on its assets,<sup>4</sup> the necessity of addressing future anticipated financing requirements and establishing appropriate allowances, or "buckets," for future debt was foreseeable at the time HT entered into its existing financing arrangements. Surely, at the time HT entered into its existing financing arrangements, the limitations of HT's network were well-known. As just one example cited by HT in its Petition, HT's lack of infrastructure in the Puna district on the island of Hawaii was described in a Honolulu Star-Bulletin article while the Carlyle merger transaction was undergoing review at the Hawaii Commission. Hawaiian Telcom should not be permitted to skirt the rules to make up for its own poor planning and forecasting.

Finally, in its Petition, HT makes certain commitments about how it will spend any federal high-cost support funds it receives if the Petition is granted. Specifically, HT's Petition commits to shortening loop lengths in wire centers that qualify for HCMS funding.<sup>5</sup> The Commission should go one step farther and, if it grants HT's Petition, specifically require that HT use any federal high-cost support funds received to shorten loop lengths in wire centers that qualify for HCMS funding—so as to ensure that HT's HCMS proceeds are not diverted to

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<sup>3</sup> Id. at 27, 40-41, stating "[I]n short, this condition requires Applicants to immediately reduce its debt to the level projected in 2009, which is the approximate duration of the Rate Case Moratorium Condition, and will hopefully enable the Applicants to reduce debt to sixty-five per cent (65%) in a shorter period of time."

<sup>4</sup> See Petition at 16.

<sup>5</sup> See Petition at 18.

resolving self-inflicted operational issues.<sup>6</sup> HT has made commitments in the past that it failed to follow through on, notably, its representation to this Commission that it had a “reasonable plan for developing and transitioning to independent back-office systems without “reduction, impairment, or discontinuance of service to any customer.”<sup>7</sup> To ensure accountability for the loop build-out commitments made in its Petition, Hawaiian Telcom should be required to provide wire center detail—rather than service area detail—of its two-year service quality improvement plan and progress reports filed pursuant to Hawaii Commission Decision and Order No. 22228.<sup>8</sup>

For the foregoing reasons, Pacific LightNet respectfully requests that the Commission either deny Hawaiian Telcom’s Petition, or, in the alternative, impose conditions to ensure that (i) any waiver of the calculation and disbursement methodology of section 54.309 applies equally to all eligible telecommunications carriers offering service in HT’s service areas, (ii) Hawaiian Telcom use any HCMS funds received for shortening loop lengths in wire centers that qualify for HCMS funding, and (iii) Hawaiian Telcom provide wire center detail, in addition to or in lieu of service area detail, in its annual ETC certification reports provided to the Hawaii Commission.

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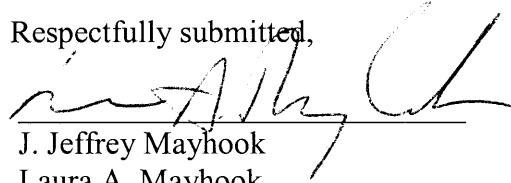
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<sup>6</sup> HT projects that it would be eligible for approximately \$6 million of federal high-cost support funds if the Petition is granted; HT recently announced that it has retained Kroll Zolfo Cooper LLC, a corporate recovery and crisis management firm, at a cost of \$600,000 per month (\$7.2 million over a twelve-month period). See Hawaiian Telcom Communications, Inc. Form 8-K filed Feb. 4, 2008.

<sup>7</sup> See DA 04-2541, WC Docket 04-234, Released Aug. 17, 2001, granting streamlined treatment to the transfer of Verizon Hawaii to the Carlyle Group, at p. 2.

<sup>8</sup> *In the Matter of the PUBLIC UTILITIES COMMISSION Instituting a Proceeding for the Purpose of Adopting Annual Certification Requirements for Eligible Telecommunications Carriers in the State of Hawaii*, Docket No. 05-0243; Decision and Order No. 22228, January 17, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Mayhook", is written over a horizontal line.

J. Jeffrey Mayhook

Laura A. Mayhook

MAYHOOK LAW, PLLC

34808 NE 14<sup>th</sup> Avenue

La Center, WA 98629

Tel: (360) 263-4340

Fax: (360) 263-4343

Attorneys for Pacific LightNet, Inc.

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